

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

JAMES E. GRAHAM II; DENNIS ADKINS
ROGER WRISTON; AND DAVID B. POLK;
On behalf of themselves and
Others similarly situated; and
UNITED MINE WORKERS OF AMERICA,
INTERNATIONAL UNION

Plaintiffs,

v.

Civil Action No. 1:19-cv-00597

JUSTICE ENERGY CO. INC.;
KEYSTONE SERVICE INDUSTRIES, INC.
BLUESTONE COAL CORPORATION;
DOUBLE-BONUS COAL CO.; AND
SOUTHERN COAL CORPORATION,

Defendants.

**PLAINTIFFS' NOTICE OF MOTION FOR AN ORDER TO SHOW CAUSE WHY
DEFENDANTS SHOULD NOT BE FOUND IN CIVIL CONTEMPT OF A COURT
ORDER**

1. **COMES NOW** Plaintiffs, James E. Graham II; Dennis Adkins, Roger Wriston; and David B. Polk; on behalf of themselves and others similarly situated (“the retiree Plaintiffs”) and the United Mine Workers of America, International Union (“UMWA”) pursuant to Fed. R. Civ. P. Rule 7(b) and Rule 70(e), and L.R. Civ. P. Rule 4.1.1 and Rule 7.1, and hereby move this Court for an Order of Civil Contempt which is occasioned by the failure of Defendants Justice Energy Co., Inc.; Keystone Service Industries, Inc., Bluestone Coal Corporation; Double-Bonus Coal Co.; and Southern Coal Corporation to comply with the Consent Order issued on January 21, 2020 in this matter.

2. As provided more fully in the Declaration of Josh West attached hereto as Exhibit No. 1, and in the Declaration of T.J. Baker attached hereto as Exhibit No. 2, and as set forth in Plaintiffs' Memorandum in Support of its Motion, since the issuance of the January 21, 2020 Consent Order, Defendants have failed to consistently comply with said Order as they have periodically failed to provide prescription drug coverage as required by and set forth in the collective bargaining agreements' Employee Benefit Plan, in violation of said Order. Defendants' failure to Comply with the January 21, 2020 Consent Order constitutes civil contempt within the meaning of 18 U.S.C. § 401.

3. Pursuant to Fed. R. Civ. P. Rule 10(c) (Form of Pleadings; Adoption by Reference), Plaintiffs adopt by reference the statements set forth in their Complaint filed in this matter, as well as the agreement contained in the January 21, 2020 Consent Order.

4. For the reasons set forth in this Motion, the Memorandum in Support of this Motion, and the Declarations attached to this Motion, and pursuant to Fed. R. Civ. P. Rule 7(b) and Rule 70(e), and L.R. Civ. P. 4.1.1, Plaintiffs hereby **MOVE** for entry of an **ORDER** to Show Cause why Defendants should not be held in contempt for failing to comply with the January 21, 2020 Consent Order in this case. Plaintiffs further seek damages in the amount of any out-of-pocket expenses incurred by the retirees and their eligible dependents during the time during which the prescription drug coverage was cancelled, reasonable attorneys' fees, necessitated by this contempt proceeding, and for such further and other relief as the Court may see fit to grant.

Respectfully Submitted,

/s/ Kevin F. Fagan

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CERTIFICATE OF SERVICE

I hereby certify that on this **16th Day of April, 2021**, I electronically filed the foregoing **PLAINTIFFS' NOTICE OF MOTION FOR AN ORDER TO SHOW CAUSE WHY DEFENDANTS SHOULD NOT BE FOUND IN CIVIL CONTEMPT OF A COURT ORDER** with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to CM/ECF participants. All others were served via e-mail and by 1st class U.S. mail.

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